No. 78-1047

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

GEORGE T. HORVAT and CAROL R. HORVAT
JAMES J. MINESAL and JOYCE MINESAL,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, George T. Horvat, et al., Petitioners-Appellants, Pro Se, in the court below, pray that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Seventh Circuit entered in this case.

Opinion and Order Below

The Order of the United States Court of Appeals for Seventh Circuit, dated June 7, 1978, is set forth in Appendix A and B. Rehearing was denied on July 17, 1978, and notice thereof is set forth in Appendix C.

Constitutional Provisions

United States Constitution, Article IV, Section 2, and Amendments I, V, IX, X, and XIV, Section 1.

Jurisdiction

The Court of Appeals entered its Order on June 7, 1978, (App. A and B). Petition for Rehearing, timely filed, was denied on July 17, 1978, (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and rules 22.3 and 46 of the Rules of this Court.

Questions Presented

1. To bring the point at issue to the attention of the Court clearly and quickly, it will suffice to quote the Respondent-Appellee in Respondent's Brief In Answer to the United States Tax Court, at page 19;

> "The respondent does not challenge petitioners' constitutional right to create a trust. The respondent does not challenge this right nor the validity of the trust under state law. Although it is questionable whether an individual's life-time services can legitimately constitute the corpus of a trust, it is the effect of such an attempted transfer for federal purposes which is the issue."

2. Whether the lower courts have exercised their judicial responsibility adequately, to insure and safeguard Petitioners' rights under United States Constitution, Article IV, Section 2, and Articles of Amendment I, V, IX, X, and XIV, Section 1?

3. Whether United States Court of Appeals for the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision?

Statement of the Case

On June 21, 1971, Petitioner George T. Horvat created the George T. Horvat Family Estate (A Trust). On September 21, 1971, Petitioner James J. Minesal created the James J. Minesal Family Estate (A Trust). The Petitioners "capitalized" their individual, business entities (their trusts) with their personal property, similar to and synonymous with countless thousands of other Sovereign Citizens who "capitalized" their service corporations with their personal property, e.g., their labor.

Timely and complete tax returns were filed by Petitioners and processed by Respondent in a normal manner beginning with returns for calendar year 1971.

On April 14, 1975, by statutory notice sent to Petitioners, Respondent determined deficiencies in income tax for taxable years 1971 and 1972 in the amounts of $372.00 and $1292.58, respectively for Petitioner Horvat, and in amounts of $77.86 and $931.29, respectively for Petitioner Minesal.

Subsequently, Petitioners filed their petitions with United States Tax Court in a timely fashion and their consolidated cases came before the Court on June 24, 1976. The briefing schedule was completed on January 20, 1977.

On April 11, 1977, United States Tax Court sustained the Respondent's determination of deficiencies and said;

> "The sole issue for our decision is whether the purported conveyances by Petitioners George T. Horvat

and James J. Minesal of their lifetime services to their respective family trusts were effective to shift the tax burden on amounts paid as compensation for those services to the respective trusts."

In its Opinion, the Court concluded, in part, as follows:

"Petitioners herein have conceptually failed to perceive, albeit at time slight, between anticipatory assignment of income to some other entity and the performance of substantial services by an entity through its agents or employees. Petitioners' conveyance of the respective life-time services and the income earned through the performance of those services was simply an assignment of income and ineffective to shift the tax burden from petitioners to their family trusts."

On December 10, 1977, the briefing schedule in the United States Court of Appeals for the Seventh Circuit was completed.

On June 7, 1978, the Court issued its Order (Apps. A and B) sustaining the Respondent. And, its Order (App. C) denying Petitioners' Petition for Rehearing was issued July 17, 1978.

On this date, September 5, 1978, the Petitioners filed this action.

Pursuant to Rule 39; "If papers are filed in a form which is not clearly legible, the clerk will require that new copies be substituted, but the filing shall not thereby be deemed untimely".

REASONS FOR GRANTING THE WRIT

A.

THIS IS AN IMPORTANT CASE OF FIRST IMPRESSION, BECAUSE IT INVOLVES FOR THE FIRST TIME THE APPLICATION OF THE DOCTRINE OF EQUAL PROTECTION UNDER THE LAW IN THE SPECIFIC AREA OF THE INDIVIDUAL'S INALIENABLE RIGHT TO IMPLEMENT, UTILIZE AND EMPLOY HIS PERSONAL PROPERTY, NAMELY, HIS LABOR, e.g., HIS LIFE-TIME SERVICES.

The Seventh Circuit by its Order is attempting to severely restrict the mandatory breadth of this constitutionally guaranteed principal and precept.

Consequently, the issues presented by this Petition are novel and urgently require a decision by this Court to assure uniform, nationwide application of the safeguards contained in United States Constitution at Article IV, Section 2, paragraph 1.

B.

CONGRESS SHALL MAKE NO LAW . . . ABRIDGING THE RIGHT OF THE PEOPLE TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

The Petitioners, appearing Pro Se from the outset of these proceedings, repeatedly requested the courts below to take at least, judicial notice of the full record as submitted. Instead, they have denied the Petitioners the full and complete hearing and the open and neutral consideration of their case that normal procedures and the law man-

dates; as clearly reflected in a review of Appendices A, B, and C, hereto attached.

In order to further clarify the issues presented here, Petitioners respectfully attach hereto, as Appendix D, their petition for Rehearing to the Seventh Circuit.

C.

THE FUNDAMENTAL, CONSTITUTIONAL QUESTION THAT HAS SURFACED HERE CAN NOT BE MUTED OR EVADED. IN THE INTEREST OF JUSTICE AND FOR THE CONVENIENCE OF THIS COURT, THE DIE SHOULD BE CAST NOW.

As early as 1971, Members of Apocalypse, Ltd. initiated this "Good Faith Controversy" with the Executive Branch of government. They did so when Justice William O. Douglas admonished the Nation, that; "The people are the sovereigns. They can make it exactly the kind of country they want".

More recently, the past, Chief Financial Officer of the United States, William E. Simon, stated publicly as follows:

> "Two decades of ever burgeoning government now threaten the collapse of a great industrial civilization and this is finally coming home to the citizenry".
>
> "The American people are frightened — they know something is wrong. They see inflation rising at an ever increasing rate and they see their incomes eroding. They are looking for the answer, and I think the search is leading to a return to the principals that this country was founded on".

This "Horvat Case" is but the vanguard of a cavalcade of adjudication, that unless judiciously served now, will evolve into a torrent of court actions that will not be limited in scope to passive, judicial review.

Currently, Apocalypse Members have in excess of twenty cases scheduled for processing in United States Tax Court. They have four cases currently in the process of appeal at the state level in Wisconsin. They have a jury case in process in Federal Court for the Eastern District of Wisconsin.

The Apocalypse Membership is resolute in their contention, that the importance of the doctrines of equal protection and due process to both the vindication of their constitutionally guaranteed rights and the effective functioning of government, are as worthy of certiorari, as was the case in *Butz* v. *Economou et al.* in Writ No. 76-709.

The Petitioners herein certainly are not profiting from this exercise. The mental strain, effort and frustration endured could never be offset by the minimal, monetary stake in the balance. And there's the rub, for not many among us are prepared or willing to make the necessary sacrifice to save our system of government. The fault lies not with the Executive Branch as much as it falls on the Legislative Branch. We make this effort so that the Judicial Branch of government can assert itself, sustain the Constitution, and provide us all perhaps our last chance to save this Nation, the last beacon of hope and freedom in the world.

CONCLUSION

For all the above reasons, petitioners pray that this Honorable Court grant this Writ of Certiorari directed to the United States Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

GEORGE T. HORVAT
For all the Petitioners, Pro Se
1319 South 102nd Street
West Allis, Wisconsin 53214

APPENDIX

APPENDIX A

Unpublished Per Curiam Order

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 7, 1978.

Before
Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT,
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

This cause came on to be heard on the transcript of the record from the United States Tax Court.

On consideration whereof, it is ordered and adjudged by this court that the decision of the United States Tax Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

APPENDIX B

Unpublished Order Not To Be Cited Per Circuit Rule 35

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
Submitted May 16, 1978
June 7, 1978.

Before

Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT,
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

ORDER

George and Carol Horvat and James and Joyce Minesal appeal from the decision of the United States Tax Court upholding certain income tax deficiencies determined by the Commissioner. Briefly, the Horvats and Minesals created trusts to which they assigned "the exclusive use of my lifetime services and all resultant earned remunera-

tion." The Tax Court held that this conveyance was merely an anticipatory assignment of income and as such, under *Lucas* v. *Earl,* 281 U.S. 111 (1930), was income to them and should have been so reported. *In addition,* this court only recently held, in a case where payments were made by an employer indirectly to the educational institution attended by taxpayers' children, that one who earns income may not avoid taxation through anticipatory arrangements. *Armantrout* v. *Commissioner,* 570 F.2d 210 (7th Cir. 1978).

The well-reasoned memorandum opinion of the Tax Court sets forth the facts and the applicable law, *and, as well, responds to the arguments now made again to this court.* In view of this, the judgment of the Tax Court is affirmed and the opinion of that court is adopted by this court.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 17, 1978.

Before

Hon. Walter J. Cummings, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

GEORGE T. HORVAT and CAROL R. HORVAT, and
JAMES J. MINESAL and JOYCE MINESAL,
Petitioners-Appellants,

No. 77-1874 vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from the United States Tax Court

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by George T. Horvat, et al., petitioners-appellants, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 77-1874

GEORGE T. HORVAT and CAROL R. HORVAT
JAMES J. MINESAL and JOYCE MINESAL,
Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee

ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT

PETITION FOR REHEARING BY APPELLANTS

STATEMENT OF ISSUE

Whether the Appellants are entitled to a rehearing, consistent with Rule 35 of the Federal Rules of Appellate Procedure, because the proceeding involves a question of exceptional importance and because to deny a rehearing would be inconsistent with substantial law?

STATEMENT OF CASE AND ARGUMENT

The majority of the Court has apparently adopted the proposed findings and conclusions of the Tax Court, although such a stance is generally not viewed with favor

because of the need to protect the substantial rights of both parties.

The scope of review by the Court was to determine whether the Tax Court's decision was clearly erroneous in regard to inferences reflected in its fact findings or rested on unsound doctrine so far as legal rulings and the basics of Constitutional law and American Jurisprudence was concerned.

The majority of the Court stated in its Order, dated June 7, 1978, as follows:

> "The well reasoned memorandum opinion of the Tax Court sets forth the facts and applicable law, and, as well, responds to the arguments now made again to this Court."

The Appellants respectfully submit that the Tax Court's findings of fact and Opinion are laced with errors of law and abuse of discretion in concoction of its judgment, when the entire record of the case is examined including stipulations, all the exhibits and particularly the Appellants' chronological catalogue of legal authorities.

The Tax Court included in its Opinion only the facts that were convenient to support its Opinion and completely ignored facts that supported Appellants' contention and legal position.

Similarly, the Tax Court unilaterally and arbitrarily selected "applicable law" consonant with its desired result and opinion, completely ignoring Appellants' submitted, "applicable law", thus denying the taxpayers the full and complete hearing and the open and neutral consideration of their case that normal procedures and the law mandates.

SEE—Tax Court's Opinion at page 10, [Appellant's Brief, Exhibit "A"]. It reads as follows:—

> "While most of the authority cited by Petitioners is simply inapposite, . . ."

Appellants respectfully submit that this truncated averment fails to qualify as an "adequate response" to Appellants' legal arguments, as suggested in this Court's Order, **supra.**

At no point did the Tax Court specifically come to grips with the nexus of this case made up of the three, concomitant elements that Appellants re-emphasized to this Court in their Reply Brief at pages 5 and 6, namely;

(a) "The laborer has the same right to sell his labor, and to contract with reference thereto, as any other PROPERTY owner."

(b) "Right to Contract", as delineated in Section 254, Volume 6, Ruling Case Law.

(c) "Right to Contract as to Personal Services", as delineated in Section 255 of the same authority.

The Tax Court's decision based solely on its adopted premise of "an anticipatory assignment of income" is clearly erroneous and rests on unsound and unproven doctrine not to be found in the record of this case.

Appellants are most reluctant to run the risk of abusing the privilege afforded them by Rule 35 of the Federal Rules of Appellate Procedure by rearguing their case anew in this Petition for rehearing, and pray that the Court will not mis-construe our efforts but accept them in all good faith as submitted, in the interest of justice.

Appellants are aware that the eight Judges to whom this appeal is directed include Thomas E. Fairchild, Luther M. Swygert, Robert A. Sprecher, Philip W. Tone, William J. Bauer, Walter J. Cummings, Wilbur F. Pell, Jr., and Harlington Wood, Jr.

And the Appellants understand that it is within the Court's discretion, that a Judge is not required to enter

a formal vote on the Petition, even though an absolute majority of the eight Judges herein is necessary to grant the rehearing, here petitioned for.

The Appellants therefore pray that all eight Judges herein will find it fair and judicious to cast a vote either for or against, rather than two or more of their number abstaining from casting a vote. In all due respect, the Appellants' desire in this regard is consistent with Amendment I, U.S.C., e.g., "The right of the people to petition government for a redress of grievances".

In regards to "the exceptional importance" of this case, for easy reference and expediency, the Appellants include below;

(a) their Conclusion as contained in their Brief to this Court:—

> "If the Constitution of the United States and the Amendments thereto are still valid, then the Decision of the Court below in the instant case is erroneous and its Order is null and void and must be reversed and rescinded."

(b) their Summation as contained in their Reply Brief to this Court:—

> "The entire record conclusively shows that Appellants' property rights and their right to contract are held inviolate under the law and that they can not be impaired, either by direct legislation or administrative interpretation."

The corollary of Appellants' Conclusion and Summation certainly affirms that *ALL* those who labor, not just members of certain professions, are guaranteed equal treatment under the law; and that consequently, the decision in *United States* v. *Empey*, 406 F. 2d., 157 (1969) will be applied universally in order to bar any possible case of unconstitutional discrimination.

The Appellants have reviewed the deep and rich record of the eight, individual Judges' history and their dedication to the law. Their combined total of years of service, experience and honors attained is not only impressive, but it is overwhelming for we Pro Se litigants who must struggle to make an acceptable case before such a prodigious tribunal.

Nevertheless, we are confident that the Judges herein will base their decisions to vote for or against a rehearing En Banc in this case, on the contents, the sincerity and the veracity of Appellants' Petition, rather than their lack of legal training and/or standing in the legal community.

CONCLUSION

In the interests of Justice, a rehearing should be granted and the Order of the Tax Court reversed.

Respectfully submitted,

George T. Horvat, Pro Se
For all Appellants

Dated at West Allis, Wisconsin
June 21, 1978

CERTIFICATE OF SERVICE

It is hereby certified that service of this Petition has been made on M. Carr Ferguson, Assistant Attorney General—Tax Division, United States Department of Justice, on this 21st day of June, 1978, by mailing four copies thereof, in an envelope, with postage prepaid, properly addressed to him as follows:

M. Carr Ferguson
Assistant Attorney General—Tax Division
United States Department of Justice
Washington, D.C. 20530

Supreme Court, U. S.
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vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL APPENDIX TO ORIGINAL PETITION FOR A WRIT OF CERTIORARI

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Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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SUPPLEMENTAL APPENDIX TO ORIGINAL PETITION FOR A WRIT OF CERTIORARI

UNITED STATES TAX COURT

Washington

Docket No. 6415-75

GEORGE T. HORVAT AND CAROL R. HORVAT,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion filed April 11, 1977, it is

Ordered and Decided: That there are deficiencies in income tax due from petitioners for the taxable years 1971 and 1972 in the amounts of $372.00 and $1,292.58, respectively.

(signed) William A. Goffe

Judge

Entered: April 11, 1977

T. C. Memo. 1977-104

UNITED STATES TAX COURT

GEORGE T. HORVAT and CAROL R. HORVAT,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JAMES J. MINESAL and JOYCE MINESAL,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 6415-75, 6417-75.

Filed April 11, 1977.

George T. Horvat, pro se.

James J. Minesal, pro se.

Rodney J. Bartlett, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GOFFE, *Judge*: The Commissioner determined deficiencies in Federal income taxes of petitioners as follows:

Docket Number	*Taxable Year*	*Deficiency*
6415-75	1971	$ 372.00
6415-75	1972	1,292.58
6417-75	1971	377.86
6417-75	1972	931.29

Upon motion of petitioners, these cases were consolidated for trial, briefing and opinion.

The sole issue for our decision is whether the purported conveyances by Petitioners George T. Horvat and James J. Minesal of their lifetime services to their respective family trusts were effective to shift the tax burden on amounts paid as compensation for those services to the respective trusts.

FINDINGS OF FACT

All of the facts are stipulated and the facts and exhibits incorporated therein are so found.

George T. and Carol R. Horvat, husband and wife, who resided in West Allis, Wisconsin, at the time of filing their petition herein, filed joint Federal income tax returns for the taxable years 1971 and 1972 with the Internal Revenue Midwest Service Center, Kansas City, Missouri. James J. and Joyce Minesal, husband and wife, who resided in Milwaukee, Wisconsin, at the time of filing their petition herein, filed joint Federal income tax returns for the taxable years 1971 and 1972 with the Internal Revenue Midwest Service Center, Kansas City, Missouri.

On June 21, 1971, Petitioner George T. Horvat created what is styled the George T. Horvat Family Estate (A Trust) (hereinafter the Horvat trust). Petitioners George and Carol Horvat and Mr. Kenneth J. Warford were named trustees. On September 21, 1971, Petitioner James J. Minesal created the James J. Minesal Family Estate (A Trust) (hereinafter the Minesal trust). Petitioners James and Joyce Minesal and Ms. Mary Taylor were named trustees.

Shortly after the creation of the respective trusts Petitioners George Horvat and James Minesal executed similar documents which purported to evidence the irrevocable conveyance of the following:

> * * * the exclusive use of my lifetime services and all resultant earned remuneration and to be earned remuneration from all and any outside source; and all my right, title and interest in said earnings from my services rendered or to be rendered, said services and resultant remuneration therefrom, from this date forth, to be controlled, directed and owned Solely by This Trust.

In return, each petitioner received 100 units of beneficial ownership of their respective trusts which constituted all of the units of beneficial ownership.

Subsequently, Petitioners George Horvat and James Minesal executed documents purporting to sell and convey to their respective family trusts assorted articles of their respective personal property. Moreover, Petitioners Horvat and Minesal conveyed by quitclaim deed their respective real property to their respective family trusts. Petitioners Horvat alsc assigned their interest in a land sale contract to the Horvat trust.

Throughout the taxable year 1971, the Heil Company issued payroll checks aggregating $11,035.42 payable to Petitioner George Horvat as compensation for services rendered and the Kohl Corp. remunerated $1,895.03 to Petitioner Carol Horvat in return for her services. On their Federal income tax return for the taxable year 1971, however, Petitioners Horvat reported only $10,007.78 which equaled the sum of the amounts paid to them before the creation of the Horvat trust. During the taxable year 1972, payroll checks were issued to Petitioner George Horvat totaling $12,538.50 by the Heil Company in return for services. In addition he received a consulting fee from the MELT Organization in the amount of $425. On their Federal income tax return for the taxable year 1972 Petitioners Horvat did not include in income any of the amounts paid to Petitioner George Horvat by the Heil Company and the MELT Organization.

In the taxable year 1971, Petitioner James Minesal was issued payroll checks totaling $9,798.99 and $194.25 from W & H, Inc., and the Minesal Trucking Company, respectively, in return for services. On their Federal income tax return for the taxable year 1970, Petitioners Minesal only included amounts aggregating $7,403.11 which were received prior to the creation of the Minesal trust. During the taxable year 1972, Petitioner James Minesal was issued payroll checks totaling $63.24 from W & H, Inc., and $12,719.59 from Schroeder Plumbing Co., Inc., in return for services rendered. Just as Petitioners Horvat, Petitioners Minesal did not include the amounts paid to Petitioner James Minesal in return for the services he rendered during the taxable year 1972.

Petitioners Horvat and Minesal each included in income for the taxable year 1972 fees which they received in

return for managerial services rendered to their respective trusts.

Petitioner Carol Horvat filed Federal fiduciary income tax returns on Form 1041 for each of the taxable years 1971 and 1972 for the Horvat trust. On the 1971 return, the Horvat trust reported as income amounts paid to Petitioner George Horvat subsequent to the creation of the trust. In addition, the trust claimed deductions for such things as real estate tax on the personal residence of Petitioners Horvat, depreciation thereon, home mortgage loan interest and amounts paid by petitioners for gas and electricity. On the fiduciary return, Form 1041, for the taxable year 1972, the Horvat trust reported the amounts paid Petitioner George Horvat by the Heil Company and the MELT Organization, and the Wisconsin State income tax refund issued to Petitioner George Horvat during 1972 less Federal income tax, Wisconsin State income tax and FICA tax withheld from amounts paid Petitioner Horvat in return for his services. In addition, the trust claimed deductions for such things as depreciation on the house occupied by Petitioners Horvat, real estate taxes and mortgage interest expense on that dwelling, dues and subscription for organizations and publications used by petitioners, petitioners' entertainment and similar expenses and management fees paid to Petitioner George Horvat.

The Minesal trust also filed a fiduciary return, on Form 1041, for the taxable years 1971 and 1972. For the taxable year 1971, the amounts received by Petitioner James Minesal for services after the creation of the Minesal trust were reported as trust income for that year. The fiduciary return filed for the taxable year 1972 included amounts paid Petitioner James Minesal for services he rendered that year. Expenses and deductions similar in

nature to those claimed by the Horvat trust, detailed in the stipulation of facts, were claimed by the Minesal trust for both taxable years in addition to the management fees paid Petitioner James Minesal.

The Commissioner, in his statutory notice of deficiency, determined that the Horvat trust could not be recognized for tax purposes and he, therefore, recomputed petitioners' taxable income by including therein for the taxable years 1971 and 1972 the amounts paid Petitioner Horvat in return for his services which were reported as income by the Horvat trust. He further determined that the consulting fee paid Petitioner Horvat was a return of trust corpus and hence not taxable. Similarly, the Commissioner determined that the Minesal trust could not be recognized for tax purposes and thus the amounts attributable to services of Petitioner Minesal reported by the trust were includable in the taxable income of Petitioner Minesal for the taxable year 1971 and 1972. He further determined that the consulting fee paid Petitioner James Minesal by the Minesal trust was a return of corpus and nontaxable.

OPINION

It is petitioners' sincerely held belief and their contention herein that it is their inalienable right under the Constitution of the United States to transfer the tax burden in income derived from their personal services to a family trust by the conveyance of their lifetime service to such an entity. Respondent contends that petitioners' attempted conveyance of their lifetime services is simply an anticipatory assignment of income and that petitioners are taxable on amounts received as compensation for services irrespective of their contractual obligation concerning the subsequent disposition of such amounts. We agree with respondent.

There is perhaps no rule of tax law more certain than that enunciated by *Lucas* v. *Earl,* 281 U.S. 111 (1930), and its progeny, that income must be taxed to him who earns it. Arrangements by which income is siphoned off and diverted to another individual or entity cannot be given effect for tax purposes without regard to their viability under applicable state law. See *Gregory* v. *Helvering,* 293 U.S. 465 (1935); *American Savings Bank* v. *Commissioner,* 56 T.C. 828, 838 (1971).

In *Lucas* v. *Earl, supra,* the taxpayer entered into an arrangement with his wife whereby she became entitled to one-half of any income he might thereafter earn. The Court, reasoning that the tax laws could not be so easily circumvented, held the taxpayer responsible for the entire amount of income. Petitioners herein have conceived a similar arrangement. They have transferred to their respective family trusts the exclusive use of their lifetime services and all the resultant remuneration from all and any outside sources. While it is true that a viable business entity actually engaged in business activity cannot be ignored, herein the conclusion is inescapable that petitioners' family trusts were nothing more than a vehicle designed to lessen petitioners' tax burden; clearly the "tax laws permit no such easy road to tax avoidance * * *." *United States* v. *Basye,* 410 U.S. 441, 452 (1973). Petitioners herein performed services for various organizations during the period under consideration and were compensated therefor; these amounts were gross income to petitioners when received notwithstanding the trust agreement. *Comer* v. *Davis,* 107 F.2d 355 (5th Cir. 1939).

While most of the authority cited by petitioners is simply inapposite, petitioners' essential contention is that they were in fact servants or agents of their respective family trusts and, therefore, the income is properly taxable

to the trusts. Petitioners cite *Bass* v. *Commissioner,* 50 T.C. 595 (1968), in support of this contention. In *Bass* this Court held that a viable business entity actually engaged in substantive business activity could not be ignored. That rationale does not extend to the facts presented herein. Similarly, *Scofield* v. *Mauritz,* 206 F.2d 135 (5th Cir. 1953), wherein partnership interests were transferred to a trust does not extend to the transfer of petitioners' personal services.

It is clear that the services performed and the business activity conducted was that of petitioners and not their respective family trusts. The very language of the trust agreement supports this conclusion as petitioners conveyed to their respective family trusts "the exclusive use of my [their] lifetime services and the resultant earned remuneration." Petitioners and not the family trusts controlled the earning of the income. See *American Savings Bank* v. *Commissioner, supra.* Petitioners herein have conceptually failed to perceive the difference, albeit at times slight, between the anticipatory assignment of income to some other entity and the performance of substantial services by an entity through its agents or employees. Petitioners' conveyance of the respective lifetime services and the income earned through the performance of those services was simply an assignment of income and ineffective to shift the tax burden from petitioners to their family trusts. Accordingly, we hold that the amounts paid petitioners in return for their services was income to them and should have been so reported. Because we find the assignment of income doctrine to be applicable, it is unnecessary to reach respondent's alternative position.

Decisions will be entered for the respondent.

Supreme Court, U.S.
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No. 78-1047

In the Supreme Court of the United States

OCTOBER TERM, 1978

GEORGE T. HORVAT, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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The question presented in this federal income tax case is whether petitioners are taxable on their wages despite their assignment of the wages to family trusts created by them.

The undisputed facts may be summarized as follows: In 1971, petitioners George T. Horvat and James J. Minesal[1] created two trusts and empowered the trustees to deal with the trust assets as they saw fit (Supp. App. 4;[2] Exs. 5-E, 6-F). Shortly after the creation of the trusts, petitioners executed similar documents purporting to convey irrevocably to their respective trusts the exclusive

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[1]"Petitioners" refers to George T. Horvat and James J. Minesal. Carol R. Horvat and Joyce Minesal are also petitioners because they filed joint income tax returns with their husbands for the years at issue.

[2]"Supp. App." refers to the Supplemental Appendix to the Petition.

use of their "lifetime services" and all of the resultant "earned remuneration from all and any outside source * * *." Petitioners also conveyed title to their personal residences and numerous articles of household furnishings to the trusts. In exchange, they each received all the units of beneficial ownership of the respective trusts (Supp. App. 4; Exs. 11-K, 12-L).

During 1971 and 1972, petitioners' employers paid them their wages directly in the usual fashion. However, on their income tax returns for 1971, petitioners included only the wages received by each of them prior to the purported conveyances of their lifetime services to the family trusts. For 1972, they also included certain fees they received for managerial services rendered to their respective family trusts (Supp. App. 5-6; Exs. 1-A to 4-D). On fiduciary income tax returns for the same years, petitioners' trusts reported the wages paid to them subsequent to their creation. In addition, each of the trusts claimed deductions for expenses incurred with respect to personal residences furnished petitioners, for trust management fees paid to petitioners, and for alleged employee business expenses incurred by petitioners (Supp. App. 6-7; Exs. 7-G to 10-J).

On audit, the Commissioner of Internal Revenue determined that petitioners' wages were taxable to them and not to the trusts and recomputed their taxable income. The Commissioner further determined that the managerial fees paid petitioners by their trusts represented a nontaxable return of corpus.[3] The Tax Court upheld the Commissioner's determinations (Supp. App. 7-9) and the court of appeals affirmed per curiam (Pet. App. 2-3).

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[3]In computing their tax liability, the Commissioner also allowed petitioners various itemized deductions.

1. The decision below correctly held that petitioners' attempted conveyances of their lifetime services to their respective family trusts were anticipatory assignments of income. This Court has long held that it is a basic principle of income taxation that income must be taxed on the person who earns it. *Lucas* v. *Earl*, 281 U.S. 111 (1930); *Commissioner* v. *Culbertson*, 337 U.S. 733, 739-740 (1949). It follows that one who earns income cannot avoid taxation by entering into a contractual arrangement whereby that income is assigned to some other entity or person. *United States* v. *Basye*, 410 U.S. 441 (1973).

Here, petitioners performed services for various employers during the period in question but attempted to avoid the federal income tax on their wages by assigning the income to the family trusts which they created. The Tax Court found, however, that the services performed and the business activity conducted were those of petitioners, and that petitioners, and not the family trusts, controlled the earning of the income. *American Savings Bank* v. *Commissioner*, 56 T.C. 828, 839 (1971); *Wesenberg* v. *Commissioner*, 69 T.C. 1005 (1978); Rev. Rul. 75-257, 1975-2 Cum. Bull. 251. Accordingly, the amounts paid petitioners in return for their personal services were taxable to them under the assignment of income principle. *Lucas* v. *Earl*, *supra*; *Helvering* v. *Horst*, 311 U.S. 112 (1940); *Harrison* v. *Schaffner*, 312 U.S. 579 (1941). See also *Comer* v. *Davis*, 107 F. 2d 355 (5th Cir. 1939).

2. There is no basis for petitioners' attack (Pet. 5-7) on the constitutionality of the assignment of income doctrine. As this Court has repeatedly held, the assignment of income principle is a "cornerstone" of the federal income tax system. *United States* v. *Basye*, *supra*, 410 U.S. at 450. Petitioners argue (Pet. 5) that the result below impairs in each instance the "inalienable right to implement, utilize and employ his personal property, namely, his labor, *e.g.*,

his life-time services." But the assignment of income doctrine does not interfere with petitioners' right to employ their personal services as they see fit. It only requires that they be taxed on the fruits of those services. See *Lucas* v. *Earl, supra,* 281 U.S. at 115; *Helvering* v. *Clifford,* 309 U.S. 331 (1940). Cf. *Gregory* v. *Helvering,* 293 U.S. 465 (1935); *Sakol* v. *Commissioner,* 574 F. 2d 694 (2d Cir.), cert. denied, No. 78-14 (Oct. 2, 1978).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1979

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